

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Promoting Investment in the 3550-3700 MHz	)	GN Docket No. 17-258
Band	)	
	)	

To: The Commission

**COMMENTS OF ATN INTERNATIONAL, INC.**

ATN International, Inc., on behalf of itself and its subsidiaries (“ATN”),<sup>1</sup> submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) regarding proposed modifications to the rules governing Priority Access Licenses (“PALs”) that will be auctioned in the 3550-3700 MHz Band (“3.5 GHz Band”).<sup>2</sup> Chairman Pai previously recognized that the FCC was testing the 3.5 GHz Band “to see if we can implement a sharing regime that will allow a mix of innovative offerings to flourish,” and asked, “have we struck the right balance?”<sup>3</sup> The answer, as discussed herein, is a resounding “yes.”

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<sup>1</sup> ATN through its subsidiaries Vitelcom Cellular, Inc. (d/b/a Viya Wireless), NTUA Wireless, LLC (a joint venture with the Navajo Nation), SAL Spectrum, LLC, and Commnet Wireless, LLC, provides retail and wholesale services to rural and insular areas of the United States, particularly in under- and un-served areas. For instance, Commnet builds wireless networks and provides wholesale (roaming) services in areas where national providers generally find construction to be uneconomic. NTUA Wireless offers wireless voice and broadband (mobile and fixed) and Lifeline services on Tribal lands, which are notoriously difficult to construct and serve. And, Viya offers wireless voice/data and Lifeline services in the US Virgin Islands.

<sup>2</sup> *Promoting Investment in the 3550-3700 MHz Band*, Notice of Proposed Rulemaking and Order Terminating Petitions, GN Docket No. 17-258, FCC 17-134 (rel. Oct. 24, 2017) (“*NPRM*”).

<sup>3</sup> *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011 (2016).

ATN agrees that the Commission should continue to “promote robust network deployments in both urban and rural communities” in the 3.5 GHz Band.<sup>4</sup> However, ATN cautions the Commission against making revisions to the 3.5 GHz Band rules that will limit participation and decrease potential investments and construction in rural areas. The Citizens Broadband Radio Service (“CBRS”) band was introduced as an “innovation band” aimed at encouraging participation – particularly in rural areas – by new entrants and smaller providers and promoting investment in new services and technologies for use in the band.<sup>5</sup> Based on the active investment and interest in the band, the current rules have been widely successful, and have been properly formulated to promote creative deployment opportunities that can help eliminate the digital divide. Accordingly, the FCC should reject proposals that would reverse course and potentially harm the innovative business cases being adopted in the 3.5 GHz Band. In particular, the Commission should not increase the geographic license area size of the PALs, which would likely make it uneconomic for small entities and new entrants to participate in a PAL auction, as well as strand investments already made in reliance on the existing rules.

## **DISCUSSION**

### **I. The Commission Should Not Modify the Geographic Area Licenses for PALs from Census Tracts to Partial Economic Areas (PEAs)**

When the Commission initially adopted the rules for the 3.5 GHz Band in 2015, it defined the geographic area for each PAL as one census tract.<sup>6</sup> This was done in a well-reasoned and balanced fashion based upon a review of the significant record in the proceeding. The

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<sup>4</sup> *NPRM* at ¶ 2.

<sup>5</sup> *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, ¶ 2 (2015) (“*First Report and Order*”).

<sup>6</sup> *Id.* at ¶ 96.

Commission astutely recognized that “traditional licensing areas will not allow users of the band to acquire PALs only for those specific geographic areas they intend to serve.”<sup>7</sup> Accordingly, the Commission expressly adopted census tracts to “encourage participation from a wide variety of users and a broad range of operations.”<sup>8</sup> As the Commission explained, “census tracts offer a variety of benefits, including geographic sizes varying by population density, nesting into other political subdivisions including city lines, and aligning with other natural features that track population density.”<sup>9</sup> The Commission also noted that “PAL applicants could target specific geographic areas in which they need additional coverage and avoid applying for areas that they do not intend to serve.”<sup>10</sup> Lastly, the Commission noted the ability of census tracts to “naturally mirror key considerations in targeted deployment by service providers,” and to align well with small cell deployment.<sup>11</sup> Despite the recent pleas of various larger carriers, circumstances have not changed in a way sufficient to compel the Commission to modify its well-reasoned initial determination that census tracts are the appropriate geographic area for PALs.

The extensive record surrounding the 3.5 GHz Band supports the fact that census tracts will open the auction of PALs to potential users outside the usual players and increase the likelihood of providing localized services to rural and underserved areas. Census tracts will also allow a broad variety of use cases and new entrants, such as schools, hospitals, Internet of Things (“IoT”), airports, stadiums, arenas and race tracks to compete in the PAL auction for the opportunity to provide innovative and unique services in the 3.5 GHz Band. Equipment

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at ¶ 151.

<sup>9</sup> *Id.* at ¶ 94.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at ¶¶ 97-98.

providers such as Ruckus Wireless and Qualcomm have developed and demonstrated technologies that would enable entities such as businesses, hotels, municipalities and other service providers to deploy and operate their own networks without having to acquire large spectrum areas that they are unable to serve.<sup>12</sup> As Google noted, “small cell areas such as census blocks . . . could make spectrum both available and useful for venues, institutions, local operators, and other non-traditional players, while also accommodating the local densification plans of established wireless carriers.”<sup>13</sup>

In addition, numerous rural carriers and organizations have supported the adoption of census tracts as critical for the deployment of services to rural areas.<sup>14</sup> Rural carriers have stressed that, with larger license areas, rural areas are more likely to be combined with urban areas in a single PEA – which would force such providers to bid for license areas that include territory far outside of their service areas, and to bid against the largest carriers that are seeking to serve primarily urban areas. As noted by Southern Linc, PEAs “are much too large for the service needs of the vast majority of potential users of the CBRS band, such as rural broadband providers, private network operators, municipalities and state and local government agencies, commercial venues (such as stadiums, arenas, and shopping malls), educational institutions, and so forth.”<sup>15</sup> The adoption of larger geographic license areas would force smaller carriers and new entrants to pay for areas they do not intend to serve, and thus likely prevent them from participating in the PAL auction at all. In short, an entity that wanted to construct a census tract

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<sup>12</sup> Comments of Google Inc. and Alphabet Access In Response to Petitions for Reconsideration in GN Docket No. 12-354, at 8 (filed July 24, 2017) (“Google Comments”).

<sup>13</sup> *Id.* at 17.

<sup>14</sup> Joint Comments of Rural Wireless Association and NCTA-The Rural Broadband Association in GN Docket No 12-354 (filed July 24, 2017).

<sup>15</sup> Comments of Southern Linc in GN Docket 12-354, at 7 (filed July 24, 2017).

area would be forced to submit the highest bid for the PEA that encompassed the census tract, which would cause the price needed to be paid for that census block to skyrocket, and likely freeze out small, rural providers, as well as new entrants.

Moreover, numerous providers, including Commnet, have already relied upon the Commission's prior rules determination, spending significant amounts of resources and capital to move forward with the previously established rules framework. This investment would only continue once the licensing framework is fully finalized as adopted, with providers making significant investments aimed directly at mitigating the digital divide. The record in Docket 12-354 confirms that the 3.5 GHz rules as currently adopted are attracting significant investments from a wide variety of business models, and plans to participate in an upcoming auction by a wide range of providers and new entrants. As Google notes, many of these commenters "confirm that their interest, investments and planned deployments in the 3.5 GHz Band depend on maintaining the CBRN operating rules the Commission adopted two years ago."<sup>16</sup> Accordingly, "a significant enlargement of PAL license areas would not only limit future investments to large carriers, it would also strand investments already made in reliance on the existing rules by small providers that can ill afford to waste such substantial investments due to unexpected regulatory changes."<sup>17</sup>

If the Commission abruptly switches course to larger geographic areas, it will effectively foreclose smaller entities and new entrants from participating in the PAL auction.<sup>18</sup> In doing so,

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<sup>16</sup> Reply Comments of Google Inc. and Alphabet Access in GN Docket 12-354, at 3 (filed August 8, 2017) ("Google Reply Comments").

<sup>17</sup> *Id.* at 12.

<sup>18</sup> The following representative comments were filed in GN Docket No. 12-354 on July 24, 2017, unless otherwise noted: *See, e.g.*, Amplex Electric, Inc. (d/b/a Amplex Internet) Comments at 1 (stating it had every intention of bidding on PALs in its service area, but has started to scale back

the Commission would violate its obligations under Section 309(j) of the Communications Act, which it recognized in the *First Report and Order*, noting that the adoption of census tracts helped fulfill its mandate under Section 309(j) “in light of the opportunities for participation with much lower capital investment requirements associated with smaller service areas,” and that the “larger, traditional license areas favored by some commenters are inconsistent with our desire to promote innovative, low power uses in this band, such as small cells, which align well with small, targeted geographic areas such as census tracts.”<sup>19</sup>

In contrast, keeping smaller license areas would not prevent larger carriers from serving broader areas. Large carriers that want to provide service to traditional geographic license areas

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investment due to uncertainty of the band); Bernhardt Commc’ns Co. Comments at 2 (arguing that the proposals would “devastate opportunities for WISPs . . . to enter, use and provide service under CBRS”); County of Bland, Virginia Comments at 1 (offering PALs in “reasonable census block sizes” with “limited terms” is “the main reason the [WISP] we are working with [made] investment in this technology and this band. This model gives small companies like them the opportunity to have quality spectrum in the areas they cover at a cost they can afford.”); Dynamic Spectrum Alliance Comments at 9 (“Increasing the size of the license areas to PEAs will correspondingly increase the cost of the license to the point where PALs are economically reasonable only for large carriers with a business model of monetizing spectrum over a large area.”); e-vergent Comments at 1 (stating its intention to bid on PALs as currently designed but contending that PEAs would be “simply too large and make deployment a non-starter”); Open Technology Institute at New America and Public Knowledge Comments at 20 (“Auctioning PALs as large as [PEAs], or even counties, will make licenses prohibitively expensive for smaller and more locally-focused wireless providers (e.g., WISPs) seeking to offer service to smaller, more targeted areas.”); Telrad Networks, Ltd. Reply Comments at 2 (filed Aug. 8, 2017) (noting that many of its small customers’ business models “do not support service of multi-county or multi-tract areas when their geographic market may be only a few square miles or a small town”); Wireless Internet Service Provider Association (“WISPA”) Comments at 14 (“Greatly increasing both license terms and geographic license areas will make it impossible for WISPs and other smaller entities desiring to serve smaller geographic areas to even bid at a PAL auction.”); Letter from Stephen E. Coran, Counsel to WISPA, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Oct. 5, 2017) (Google/WISPA *Ex Parte*); (“The proposed rules under consideration, however, would . . . assure that only a select few large mobile carriers would hold [PALs]”). *See also* Letter from Michael Calabrese, Director, Wireless Future Project, OTI/New America, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 17-258, et al., at 1-2 (filed Oct. 12, 2017) (arguing that PEAs are unnecessary as large mobile carriers will not use this spectrum for coverage, but rather for capacity in localized areas).

<sup>19</sup> *First Report and Order* at ¶ 100.

would still have the ability to aggregate multiple contiguous census tracts, particularly since they nest into the standardized license areas commonly used by the Commission. In contrast, if the Commission enlarges the geographic areas for PALs, the ability for these smaller carriers and innovative use cases to participate in the auction would be effectively foreclosed.

The Commission should also reject the speculative and unfounded suggestions that licensing PALs on a census tract basis will be a burden on SAS operators or operations or make for an overly complicated auction. Dynamic Spectrum Alliance explains that “[a]n auction with census-tract PALs is no different, from a technical perspective, than one for larger license areas – it simply would include a larger number of individual auctions.”<sup>20</sup> And, of course, there are various other examples of current and former innovative and high-volume auctions that have been a success.<sup>21</sup> ATN agrees with Google that “modern data management systems are fully capable of handling the number of PAL auctions required to support smaller PALs.”<sup>22</sup> Likewise, the record demonstrates that concerns surrounding SAS operations are unfounded because SAS operations “protect users from interference based on the actual location and coverage of transmitters, not license boundaries.”<sup>23</sup> Numerous SAS providers have rejected this suggestion.<sup>24</sup>

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<sup>20</sup> Comments of Dynamic Spectrum Alliance (“DSA”) in GN Docket No. 12-354, at 10 (filed July 24, 2017) (“DSA Comments”).

<sup>21</sup> For instance, eBay has approximately one billion active listings at any given time, while Google conducts millions of auctions every minute for its advertising business. In addition, the FCC also just completed a very complex 600 MHz incentive auction. *See* Letter from Austin C. Schlick, Director, Communications Law, Google, to Marlene H. Dortch, Secretary, FCC, in GN Docket No. 12-354, Attached Presentation (Oct. 16, 2017).

<sup>22</sup> Google Reply Comments at 13.

<sup>23</sup> DSA Comments at 10.

<sup>24</sup> Google Comments at 24; Sony Comments in GN Docket No. 12-354, at 1-2 (filed July 21, 2017).

## **II. The Commission Must Not Modify Other CBRS Rules in a Fashion that Will Limit Rural Construction and Innovative Business Cases**

The 3.5 GHz Band is unlike currently licensed mobile bands, and, accordingly, deserves a licensing scheme that promotes experimentation. As the Commission has noted, the 3.5 GHz Band is an “innovation band,”<sup>25</sup> and, accordingly, any rule revisions must continue to allow for entities to experiment with different types of technologies in the band, as well as not tilt the playing field toward the four major wireless carriers for spectrum access. The current licensing scheme is equitable to both the smallest and largest businesses, and must remain so.<sup>26</sup>

Accordingly, while ATN does not specifically oppose an extension of the licensing term for PALs (so long as the geographic license area remains at the currently adopted size), it believes a three year license term would still be sufficient to promote investment and innovation.<sup>27</sup> To the extent longer license terms are adopted, the Commission should adopt a minimal construction requirement for renewal purposes to ensure that the licensed spectrum is being used appropriately. Such a license standard would ensure that the licensed spectrum is not being warehoused, while still allowing entities to engage in the experimental and innovative business models that were intended for this band.

In addition, ATN submits that the current 40 MHz spectrum aggregation limit for each licensed area should remain.<sup>28</sup> Such a limit will ensure that numerous entities have the ability to

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<sup>25</sup> *NPRM* at ¶ 2.

<sup>26</sup> ATN is pleased that the Commission has rejected T-Mobile’s proposal to designate the entire 3.5 GHz Band for PAL use and limit General Authorized Access (“GAA”) to opportunistic use. ATN agrees that “eliminating dedicated GAA spectrum would reduce the utility of the CBRS band for an array of entities,” while maintaining the current licensing scheme “enable[s] any potential operator to explore different uses, take risks, and follow market forces.” Google Comments at 12, 13.

<sup>27</sup> *NPRM* at ¶ 13.

<sup>28</sup> *Id.* at ¶ 27.



provide service in each geographic area. With regard to revisions to the secondary market rules, ATN believes that the concept of secondary market transactions would not be a suitable replacement for smaller geographic areas.<sup>29</sup> As noted in detail above, smaller license areas provide significant benefits to smaller carriers and new entrants. In fact, allowing larger license areas with the ability for secondary market transactions only puts more power in the hands of the four largest wireless providers. They would essentially be the gatekeepers for this spectrum, in violation of the Commission's obligation under Section 309(j) to widely distribute such licenses. This would not be an effective way "to facilitate the ability of small entities to access the spectrum they desire for targeted, local deployments."<sup>30</sup> To the extent that the Commission decides to adopt larger geographic area licenses, and proceeds with a revision to the secondary market transaction rules, the Commission should implement an affirmative obligation for larger providers to engage in such transactions with smaller providers and new entrants.<sup>31</sup>

Lastly, ATN submits that the current rules regarding bidding on specific PAL license blocks are sufficient. In particular, as Google notes, "if the Commission permitted parties to manually select frequencies, an operator could position itself in the middle of the PAL spectrum, preventing other PAL holders from aggregating contiguous blocks."<sup>32</sup> With regard to power limits, ATN agrees with Qualcomm that the emission limits should be relaxed to facilitate wider channels without power reduction.<sup>33</sup> In doing so, the Commission should make sure that any

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<sup>29</sup> *Id.* at ¶ 30.

<sup>30</sup> *Id.* at ¶ 31.

<sup>31</sup> For instance, if a larger provider is only providing service in urban areas, it should have an affirmative obligation to negotiate in good faith with rural providers who want to put such spectrum to use for rural deployment.

<sup>32</sup> *NPRM* at ¶ 49.

<sup>33</sup> *See id.* at ¶ 52.

such changes do not put a premium on being in the middle of the band vis a vis the edges of the band.

### **III. CONCLUSION**

ATN believes that the Commission adopted rules for the 3.5 GHz Band over two years ago that properly balance the needs of small carrier, large carriers and new entrants. The Commission should not adopt any changes to the 3.5 GHz Band that risk disrupting that balance, and potentially limit the ability of carriers to construct facilities in rural areas, or to adopt new and innovative use cases.

Respectfully submitted,

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